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Supreme Court of the United States

OCTOBER TERM, 1981

CITY OF AKRON, et al.,

Petitioners,

—v.—

AKRON CENTER FOR REPRODUCTIVE HEALTH, INC., et al.,

Respondents.

AKRON CENTER FOR REPRODUCTIVE HEALTH, INC., et al.,

Petitioners,

—v.—

CITY OF AKRON, et al.,

Respondents.

ON A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF *AMICUS CURIAE* OF CERTAIN RELIGIOUS ORGANIZATIONS

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BRIEF AMICUS CURIAE OF CERTAIN RELIGIOUS ORGANIZATIONS

This brief amicus curiae is filed in support of the plaintiffs below in City of Akron v. Akron Center for Reproductive Health, Inc., et al.,* by the following religious organizations: AMERICAN ETHICAL UNION; AMERICAN HUMANIST ASSOCIATION; CATHOLICS FOR A FREE CHOICE; COORDINATING CENTER FOR WOMEN IN CHURCH AND SOCIETY; UNITED CHURCH OF CHRIST; NATIONAL BOARD, YOUNG

* The views expressed by amici herein are equally relevant to the issues before the Court in Planned Parenthood of Kansas City Missouri, Inc v. Ashcroft, (Nos. 81-1255, 81-1623), and Simopolos v. Virginia (No. 81-185). Amici have chosen to file in this case because the effort to sponsor and impose belief in violation of the First Amendment which underlies all the abortion restrictions before this Court, is most explicit in the Akron ordinance.

WOMEN'S CHRISTIAN ASSOCIATION OF THE U.S.A.; NATIONAL COALITION OF AMERICAN NUNS; NATIONAL FEDERATION OF TEMPLE SISTERHOODS; NORTH AMERICAN FEDERATION OF TEMPLE YOUTH; OFFICE FOR CHURCH IN SOCIETY, UNITED CHURCH OF CHRIST; UNION OF AMERICAN HEBREW CONGREGATIONS; UNITARIAN UNIVERSALIST ASSOCIATION; UNITARIAN UNIVERSALIST WOMEN'S ASSOCIATION; UNITED CHURCH BOARD FOR HOMELAND MINISTRIES; UNITED SYNAGOGUE OF AMERICA; WOMEN'S DIVISION, GENERAL BOARD OF GLOBAL MINISTRIES, UNITED METHODIST CHURCH; and WOMEN'S LEAGUE FOR CONSERVATIVE JUDAISM.

INTEREST OF THE AMICI

The organizations joining this brief are representatives of Protestant, Catholic and Jewish faith, reflecting a broad spectrum of

religious believers in this country. These organizations also reflect a broad spectrum of beliefs about the morality of abortion.* Among the amici are denominations which adhere to religious principles that permit, counsel, and even mandate abortion under certain circumstances. Others strongly discourage it under many circumstances. But all believe that the abortion decision is a deeply religious and personal one of ultimate dimension which must be confided to the conscience of the individual woman free of governmental interference or coercion. They believe further that the effort to restrict abortion

* The positions of the Religious Coalition for Abortion Rights and 32 of national religious organizations which favor the right to choose abortion among which are the amici curiae are contained in the Appendices A & B respectively at a-1 and a-3.

is rooted in an opposing theological position concerning the creation of human life and the beginning of human pershonhood; and that in the face of religiously-based moral differences government in a free society is without power to take sides. Amici submit that the freedom of belief guaranteed by the first amendment and the unitary principle of church-state separation require invalidation of this legislation which has no purpose and effect other than to encroach upon and ultimately deny the right that is the cornerstone of our constitution--the right of conscience.

QUESTIONS PRESENTED

1. Whether the standard of strict scrutiny applied in Roe v. Wade must be applied here to fulfill this Court's duty under Article III and the Bill of Rights

to guard fundamental rights against legislative infringement.

2. Whether Akron Ordinance, Chapter 1870 violates the first and fourteenth amendments' prohibition on governmental coercion to believe, espouse belief, or act in accordance with state-sponsored belief.

3. Whether the Ordinance violates the religion clauses of the first and fourteenth amendments in that it interferes with the free exercise of religion and conscience in the abortion decision and sponsors one theological perspective on abortion in the face of profound conflict over religiously-grounded moral principles concerning the creation and sanctity of life.

SUMMARY OF ARGUMENT

Since Roe v. Wade, no case before the

Court has presented, more explicitly or pointedly than this one, the nature and scope of constitutional rights at stake in the abortion cases.

The Solicitor General's contention that this Court should dilute its standard of review and defer to the legislature whenever a fundamental right is in controversy advocates a shocking and dangerous departure from the principle fundamental to our constitutional scheme that it is the "province and duty of the judicial department to say what the law is." Marbury v. Madison, 5 U.S. (1 Cranch), 137, 176 (1803), and to protect the rights of the individual against majoritarian disapproval and excess.

This particular ordinance illustrates as well the impermissibility of abortion restrictions under the First Amendment.

The first amendment's shelter for the realm of intellect and spirit denies to the state the power to require individuals to espouse or to listen to beliefs they do not hold or information they deem false or misleading. The first amendment likewise protects against being induced or forced to act according to morally offensive beliefs. By requiring espousal of and seeking to induce conformity to the belief that human life begins at conception, the ordinance violates the first amendment. it also underscores that the decision in Roe v. Wade, which denied to civil authority the power to adopt a "theory of life," was compelled not only by the fourteenth but also the first amendment.

Finally, because the controversy over abortion involves competing moral viewpoints rooted in theological differences, the ordinance violates the

religion clauses of the first amendment. It interferes ideologically and practically with a woman's right to freely exercise her religion and conscience in making the abortion decision, while placing no similar obstacles in the path of the woman whose faith compels childbirth. Because the state-sponsored view that human life begins at conception is intrinsically and identifiably theological, the ordinance departs from the rigorous neutrality required where competing religious claims are at stake.

POINT I. THIS COURT IS DUTY BOUND TO GIVE STRICT SCRUTINY TO STATUTES THAT INFRINGE THE EXERCISE OF FUNDAMENTAL RIGHTS.

Amici had intended to address their brief entirely to the first amendment aspects of the Akron ordinance.

However, the brief filed recently by the Solicitor General of the United States suggests so radical and dangerous a departure from our constitutional scheme that a brief response is required.

The Solicitor's argument that the Court should dilute the constitutional standard for reviewing restrictions on abortion* is inseparable from his contention that legislatures on every level, and not the Court, should determine what rights are fundamental and

* In Point I, the Solicitor attempts to dilute the compelling state interest test by making it contingent on a showing that the regulation at issue is "unduly burdensome." This Court's consistent application of strict scrutiny by transforming into a threshold for scrutiny terms the Court has used to describe the result of its constitutional analyses. The affect of this dangerous play on words is to insulate a potentially vast, wavering, and subjective area from judicial review. Not only would this deeply threaten the protection which the Bill of Rights guarantees to fundamental personal rights; it would also undermine the predictability of judicial decision and, thereby, generate not less but more legislation curtailing such rights and, accordingly, more cases requiring plenary review in this Court.

the extent to which they will be protected.* Essentially, the Solicitor is calling for this Court to abdicate its constitutional function as guardian of individual and civil rights.

Similar arguments have been heard in this Nation during periods when constitutional rights were under attack. One of the most eloquent responses to the argument for legislative deference was made by Justice Jackson, in a case which is, at its heart, very similar to this one:

> The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no election.

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* See Brief of the United States, Point II generally.

West Virginia State Board of Education v. Barnette, 319 U.S. 624, 638 (1943).

To the argument that the Court lacked competence to protect fundamental rights in the face of competing policy considerations, he replied:

> ...[W]e act in these matters not by authority of our competence but by force of our commissions. We cannot because of our modest estimates of our competence in such specialties as public education, withhold the judgment that history authenticates as the function of this Court when liberty is infringed.

id. at 639-40.

The contention that the Court should defer to the legislatures on the matter of fundamental rights threatens every guarantee of the Bill of Rights. All constitutional rights, whether explicit or implicit, are necessarily defined and shaped by this Court's interpretation of constitutional principle. This includes

rights so fundamental as the right to be free of racial segregation, Brown v. Board of Education, 347 U.S. 483 (1954), or of state sponsorship of religious exercises in the schools, Engel v. Vitale, 370 U.S. 421 (1962). With each one of these decisions and with countless others the Court has faced and survived powerful pressures from political movements opposed to the constitution's guarantee of these fundamental rights.*

* For example, in response to Brown v. Board of Education, its opponents sought to withdraw Supreme Court and lower federal court jurisdiction from school desegregation cases. See, e.g. HR 1228, 85th Cong., 1st Sess. (1957), and S 3476, 85th Cong., 2d Sess (1958). Likewise, after the decision in Swann v. Charlotte Mecklenberg Board of Education, 402 U.S. 1 (1971), opposition was marshalled in the form of both constitutional amendments, see, e.g. H.J. Res 1035, 92d Cong. 2d. Sess. (1972), S.J. Res. 165, 92d Cong., 1st Sess. (1971), H.J. Res. 30, 823, 856, 858, 92d Cong, 1st Sess. (1971); and bills, which received the backing of the Nixon administration, see H.R. 13915, 13916, 92d Cong., 2d Sess. (1972). In the area of school prayer, efforts to circumvent the impact of this Court's decisions in Engel v. Vitale, 370 U.S.

(footnote continued on next page)

The right to privacy which embraces the right to abortion is not, as the Solicitor suggests at one point,* less deserving of this Court's rigourous protection because it is implicit in the Bill of Rights. It is, in fact, the foundation of human capacity to exercise all the rights guaranteed

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(footnote continued from preceding page)

421 (1961) and School District of Abington v. Schemp, 374 U.S. 203 11963) have included numerous constitutional amendments. See, e.g. the Becker Amendmemnt (1964), the Dirksen amendments (1966, 1967), and the Wylie amendment (H.J. Res. 191, 1971).

Similarly, this Court's decisions in the areas of reapportionment and citizen protection from legislative investigation, have been opposed by legislative attempts to limit the Court's jurisdiction. See Eisenberg, "Congressional Authority to Restrict Lower Federal Court Jurisdiction," 83 Yale Law Journal 498 (1974).

* Brief for the United States at 20-21.

in a democracy. As Justice Brandeis wrote:

> The makers of our constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the government, the right to be let alone -- the most comprehensive of rights and the right most valued by civilized man.

Olmstead v. United States, 277 U.S. 438, 487 (1928) (Brandeis, J., dissenting).

Periodically, this nation and our constitution are threatened by religious and ideological forces which seek safety in conformity, and efficacy through coercion. In such times as these when legislatures are under extreme pressure to undo the Bill of

Rights, the Court, as the ultimate guardian of the liberties fundamental to a democracy, is inevitably under attack as well. But the integrity of the Court, the survival of our constitutional system, and the guarantee of individual liberty are preserved, not by acquiescence to these pressures, but by solemn and unswerving fulfillment of the duty conferred upon this Court by the written constitution.

In sum, the Solicitor challenges the most fundamental principle of the constitutional scheme of checks and balances -- that it is "the province and duty of the judicial department to say what the law is," to declare that "an act of the legislature, repugnant to the consituation is void," and to guarantee that when rights are violated, the "individual has a right to resort to the laws of his country

for a remedy." Marbury v. Madison, 5 U.S. (1 Cranch) 137, 176, 166. This Court has no higher office under the constitution than to protect individual rights under challenge.

Under any standard of review under the fourteenth amendment, Chapter 1870 must be invalidated. But the protection of the right to abortion, like that of all fundamental constitutional rights, properly calls for undiluted application of strict judicial scrutiny.

POINT II. CHAPTER 1870 VIOLATES THE FIRST AMENDMENT"S PROHIBITION ON STATE SPONSORSHIP OF BELIEF.

At the heart of the ordinance at issue are several provisions which the City of Akron has implicitly conceded to be unconstitutional.

¶1870.06(B)(3)(4) and (5).* This concession does not remove these matters from the Court's purview, but rather underscores the unconstitutionality of the remaining sections.** It also brings into sharp focus the first amendment underpinnings of this Court's refusal to allow civil government to adopt "a theory of life" to override a woman's right

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* Brief for City of Akron at 33-37.

** The preamble makes clear that the purpose of the ordinance is to advance the belief that human life begins at conception:

> It is the finding of council that there is no point in time between union of sperm and egg, or at least the blastocyst stage and the birth of the infant at which point we can say the unborn child is not a human life, and that the changes occurring between implantation, a six-weeks embryo, a six-month fetus, and a one-week-old child, or a mature adult, are merely stages of development and maturation....

While other clauses of the preamble recite an interest in the health of the woman, the record demonstrates that the provisions purportedly serving that end are not simply unnecessary but actually increase abortion. See, respondents-cross-petitioners' brief generally.

to abortion. Roe v. Wade, 410 U.S. at 162.

The concededly unconstitutional sections require that the doctor tell a woman that "the unborn child is human life," describe fetal characteristics and functions associated with the particular stage of gestation, and tell her that the "unborn child" may be viable if over 22 weeks, and that abortion is a major surgical operation which can produce serious physical complications or emotional disturbances. Related sections prohibit performance of the abortion for at least 24 hours, ¶1870.07 and require the doctor to advise her of prenatal adoption services, ¶¶1870.06(7) and of the particular risks associated with her own pregnancy and abortion, ¶1870.06(C). A doctor who performs an abortion without observing these conditions is subject to criminal penalties, ¶1870.18(A).

It is axiomatic that the state cannot, consistent with the first amendment, use its citizens to propagandize certain beliefs. Invalidating the compulsory flag salute in West Virginia State Board of Education v. Barnette, the Court held:

> We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.

319 U.S. at 642. More recently, in Wooley v. Maynard, the Court held that "freedom of thought ... includes both the right to speak freely and the right to refrain from speaking at all," 430 U.S. 705, 714 (1977) and protected the right of individuals not to bear an ideological message which they find "morally objectionable." id. at 715. See also, Elrod v. Burns, 427 U.S. 347 (1976).

(Public employment cannot generally be conditioned on affiliation with a particular political party.)

Here the message that "the unborn child is human life" expresses a belief that is morally objectionable to many. Roe v. Wade, 410 U.S. at 117. The description of fetal characteristics has no purpose other than the support of this belief.* In striking a fetal description requirement on first amendment grounds, the Circuit Court in Planned Parenthood League of Massachusetts v. Bellotti recognized that the "primary purpose of the required information is not so much factual as it is moral." 641 F.2d 1006, 1022 (1st Cir. 1981).

* The required description of fetal development is not relevant to protecting maternal health. Rather it is designed to support the belief that the fetus is human life and increase the stress of the woman undergoing abortion. See, Planned Parenthood of Massachusetts v. Bellotti, 641 F.2d 1006, 1021-2 (1981), Leigh v. Olson, 497 F. Supp. 1340, 1345 (S.D. No. Dak. 1980).

The court drew the line between permissible and impermissible coercion of information-giving under the first amendment:

> To the extent that information may be imposed by the state, it must be neutral and objective; coercive state indoctrination of particular values or ethical judgments is objectionable to First as well as Fourteenth Amendment principles. The state may not add to its presentation of material facts such a moral overlay, an attempted imposition of ideas that is particularly objectionable in connection with the exercise of a fundamental right.

Id. at 1022. See also, Planned Parenthood of Mass. v. Bellotti, 641 F.2d 1006-1002 (1981), Margaret S. v. Edwards, 488 F. Supp. 181, 208-209 (E.D. La. 1980), Leigh v. Olson, 497 F. Supp. 1340, 1345.

The remaining information about medical risks and adoption alternatives requires the doctor to give false, misleading or

patently irrelevant information. These provisions also serve, not to ensure an informed decision, but again to support, in blatant and subtle ways, the underlying contention that abortion is immoral.*

Moreover, these sections require the doctor to communicate information he or she does not believe to be truthful let alone objective in nature. While there is no case on point in the annals of this Court, the freedom of thought and expression shielded by the first amendment must surely extend protection against state-enforced compulsion to lie or mislead. See Torasco v. Watkins, 367

* For example, although there are some cases where a doctor or counselor will discuss the alternative of adoption, to mandate that information, which is irrelevant in most cases, implicitly carries the message that the state views abortion as morally objectionable. Likewise ¶1870.06(C), which mandates description of the risks of abortion, but not of its alternatives, is particularly distorting given that abortion is the safer medical alternative.

U.S. 488, 494 (1961) cf. (first amendment prohibits limiting public office to those who have or profess belief in certain religious concepts).

The first amendment rights of pregnant women are also violated by this mandated consent and waiting process. Just as the first amendment guarantees a right to listen and receive information, see e.g., Stanley v. Georgia, 394 U.S. 557, 564 (1964) (right to read obscenity in one's house); Martin v. City of Struthers, 319 U.S. 141, 143, (1943) (right of colporteurs to distribute religious literature) it must guarantee its corollary--the right not to be forced to listen. Cf. Griswold v. Connecticut, 381 U.S. 479, 482-84 (1965) (penumbras of first amendment include many rights not specifically articulated). Thus, the Court has recognized protection against unwanted intrusion and objectionable messages for the "captive audience." See e.g. Federal

Communications Commission v. Pacifica, 438 U.S. 726 (1978) (upheld regulation of "offensive" material on radio); Kovacs v. Cooper, 336 U.S. 77 (1949) (sustained ordinance regulating sound trucks); cf, Lehman v. City of Shaker Heights, 418 U.S. 298 (1974) (upheld transit system's right not to take paid political advertising), Public Utilities Commission v. Pollak, 343 U.S. 451 (1952) (permitted radio music on busses because it contained no propaganda).

These cases indicate that the constitution intervenes to protect against forced listening where the invasion of privacy and the captivity of the audience is far less severe than it is under the Akron ordinance. By making the doctor a mouthpiece of the state, the sanctity of a woman's decision-making process is invaded. Unlike the radio listener who can decide

not to listen to a particular channel, the pregnant woman cannot refuse the information or affect the doctor's obligation to give it to her unless she sacrifices her right to abortion.

Moreover, by forcing her to wait 24 hours, no matter how certain she is or how fully informed her decision, the City not only concretely impedes her right to abortion but also underscores its moral disapproval of her decision.

As there is little more offensive to the notion of a free people than compulsion to speak or compulsion to hear morally objectionable and one-sided messages, the standard by which this ordinance must be judged under the first amendment is the strictest. As the Court held in Barnette:

> Censorship or suppression of expression or opinion is tolerated by our constitution only when the expression presents a clear and present danger of action of a kind

> which the state is empowered to prevent and punish. It would seem that involuntary affirmation could be commanded only on even more immediate and urgent grounds than silence.

319 U.S. at 633 (emphasis supplied). These provisions which propagandize the belief that human life begins at conception, bring into focus the impermissibility of the remaining provisions of the ordinance as well as the wisdom of the decision in Roe v. Wade, 410 U.S. 113 (1973).

In Roe v. Wade, this Court emphasized the theological and metaphysical nature of the underlying question of when life begins:

> We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer.

410 U.S. at 159. The refusal to allow the state to "adopt a theory of life" to override a woman's right to abortion was, like the refusal to allow the flag salute in Barnette, an affirmation of the individual's freedom to believe and to follow one's beliefs as well as of the absence of power in the state to sponsor a contrary civil or religious faith.

Moreover, this is not a case where competing policy considerations, otherwise within the realm of legislative power, must be inhibited to protect a fundamental right. Abortion is a matter which involves competing claims based on divergent moral beliefs as to which the first amendment's guarantee of freedom of expression prohibits the state from taking sides. As the Court held in Barnette:

> Struggles to coerce uniformity of sentiment in support of some end thought essential to their time

have been waged by many good as well as evil men: Nationalism is a relatively recent phenomenon but at other times and places the ends habe veen racial or territorial security, support of a dynasty or regime and particular plans for saving souls. ...Those who begin the coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of the opinion achieves only the unanimity of the graveyard Nationalism is a relatively recent phenomenon but at other times and places the ends have been racial or territorial security, support of a dynasty or regime and particular plans for saving souls. ... Those who begin the coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard.

....

[F]reedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order. If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be

> orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein.

319 U.S. 624, 641-42 (emphasis added).

Though purporting to assure "informed consent," these sections require both the profession of belief and the giving of false, misleading, one-sided and irrelevant information. While a doctor cannot complain of being required to give the objective information necessary to ensure informed consent, Planned Parenthood v. Danforth, 428 U.S. 52, 68 (1976), Canterbury v. Spence, 464 F.2d 772 (D.C. Cir. 1972), cert den. 409 U.S. 1064 (1972), this ordinance converts the legitimate process of informed consent

into both a "straightjacket"* and a propaganda tool for the anti-abortion position. As such it violates not only the right to decide free of state interference, ** but also the first amendment right not to be coerced to speak or listen.

* Planned Parenthood v. Danforth, 428 U.S. n.8 at 68.

** See opinion of Sixth Circuit below, 651 F.2d 1198, 1207.

Despite the efforts of those opposed to abortion to create the appearance of a resolution of this deep underlying conflict over the value to be ascribed to prenatal life, it is clear that the conflict rages unabated.* It remains an irresoluble conflict between different conceptions of the meaning and sanctity of life, rooted in differing religious, moral, ethical teaching.

The effort to control abortion is a piece of a new "struggle to coerce uniformity" and dictate the bounds of permissible thought, belief, expression

* See, The Human Life Bill: Hearings on S.158 Before the Subcommittee on Separation of Powers of the Senate Committee on the Judiciary, 97th Cong., 1st Sess. (1981), The Human Life Bill - Appendix: Hearings on S.158 Before the Subcommitee on Separation of Powers of the Senate Committee on the Judiciary, 97th Cong., 1st Sess, and The Human Life Bill - S.158: Report, together with Additional and Minority Views to the Commitee on the Judciary made by its Subcommitee on Separation of Powers, 97th Cong., 1st Sess., hereinafter, Report of the East Subcommitee.

and action. The principle enunciated by this Court in Roe v. Wade--that the state may adopt no "theory of life" either to coerce or induce conformity--is the only one consistent with the first amendment and the preservation of the pluralistic society which it envisioned.

POINT III ORDINANCE NO. 160-1978, CHAPTER 1870, VIOLATES THE RELIGION CLAUSES OF THE FIRST AMENDMENT IN THAT IT INFRINGES THE FREE EXERCISE OF RELIGION AND TAKES SIDES IN A CONFLICT OVER RELIGIOUS PRINCIPLES.

The city ordinance at issue here is doubly violative of the first amendment. Not only does it require profession of a "theory of life" designed to induce women to forego abortion; it

also advances a "theory of life" which is inconsistent with religious and conscientious convictions themselves protected by the free exercise clause. Moreover, since the theory that life begins at conception (or shortly thereafter) is at its heart, religious in character, state-sponsorship thereof violates the establishment clause.

A. Chapter 1870 Violates The Right to Make and Effectuate a Conscientious Decision on Abortion Protected by the Free Exercise Clause.

Abortion ranks as a paramount concern in all major religious traditions. For those of the anti-abortion faiths, actual human life begins at or near conception and abortion is a grave sin, which destroys God's creation and is analogous to murder. Conversely, in the pro-choice faiths, the preservation of the health and

well-being of existing life, and consideration of the responsibilities of parenthood outweigh the interest in potential life and rank among the highest obligations of human beings towards one another and toward God.

The free exercise clause protects the right to believe or disbelieve. Torasco v. Watkins, 367 U.S. 488 (1961). It protects the right to practice one's beliefs, and to act in accordance with them, McDaniel v. Paty, 435 U.S. 618 (1978). It encompasses decisions about daily life which are "rooted in religious belief" rather than personal preference. Wisconsin v. Yoder, 406 U.S. 205, 215-16 (1972). And it shields the exercise of conscience: decisions that reflect "religious choice" even though not compelled by religious dogma, Thomas v. Review Bd., ____U.S.____, 101 S.Ct. 1425, 1430-31 (1981), and which are based on

"belief that occupies in the life of its possessor a place parallel to that filled by the orthdox belief in God." United States v. Seeger, 380 U.S. 163, 176 (1965).*

In this case, the lower courts heard testimony but held it unnecessary to make findings or conclusions on the free exercise claim. 479 F.Supp. 1172, 1203 (N.D. Ohio 1979); 651 F.2d 1198, 1201 (6th Cir. 1981). The free exercise claim was given extensive consideration, however, in McRae v. Califano, where the district court recognized that:

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* Though Seeger involved statutory interpretation of the conscientious objector exemption rather than a constitutional holding, the expansive interpretation was influenced by the concern for avoiding preferential treatment of the traditional believer as compared to the non-traditional one. United States v. Seeger, 380 U.S. at 176; see: Welsh v. United States, 398 U.S. 333 (1970) (Harlan, J., concurring). In Gillette v. United States, 401 U.S. 437 (1971), the selective objector claim, found to be outside the statutory exemption, nonetheless triggered scrutiny under both the free exercise and establishment clauses.

> A woman's conscientious decision, in consultation with her physician, to terminate her pregnancy because that is medically necessary to her health, is an exercise of the most fundamental of rights, nearly allied to her right to be, surely part of the liberty protected by the Fifth Amendment, doubly protected when the liberty is exercised in conformity with religious belief and training protected by the First Amendment ... The irreconcilable conflict of deeply and widely held views on this issue of individual conscience excluds any legislative intervention except that which protects each individual's freedom of concientious decision and conscientious nonparticipation.

McRae v. Califano, 491 F.Supp. 630,742, (E.D.N.Y. 1980), rev'd on other grounds sub nom. Harris v. McRae, 100 S.Ct. 2671 (1980).*

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* The Court did not review this aspect of McRae because the named plaintiffs lacked standing to raise this claim. Harris v. McRae, 100 S.Ct. at 2689-90. Here, there is no standing problem as plaintiff Dr. Bliss testified both that the informed consent statute was contrary to his beliefs and that the view expressed by ¶1870.06(B)(3) is a religious one. (Bliss, T.V., p. 128, 110, 111).

The free exercise clause protects against direct and indirect schemes to discourage religious exercise. A state invades the realm of freedom of religion if it purposefully, or even inadvertently, conditions benefits or exacts a toll that puts "substantial pressure on an adherent to modify his [her] behavior and to violate his [her] belief." Thomas v. Review Board, ____ U.S. ____, 101 S.Ct. at 1431-32; Sherbert v. Verner, 374 U.S. 398, 404-07 (1963). Thus, the protection afforded by the free exercise clause against even indirect and unintentional infringements of freedom of conscience is more sweeping than that afforded by the right to privacy. Compare Sherbert v. Verner, 374 U.S. 398 with Maher v. Roe, 432 U.S. 464, 474 (1974); Harris v. McRae, ___U.S.___, 100 S.Ct. 2671. At a minimum, regulations which impinge on a religious and

conscientious decision-making process protected by the right of privacy, likewise violate the free exercise clause.

To require a doctor to say and a woman to hear that "the unborn child is human life" clearly invades the shield afforded by the free exercise clause to the integrity of differing religious and conscientious beliefs. The statement is designed to advance the view that the fetus is a person and cause the woman to question her own beliefs and reconsider her decision to have an abortion.

The offense of Chapter 1870 to the free exercise of religion does not stop, however, with the required pronouncement of competing belief. The other constraints on the informed consent process -- the giving of irrelevant, false, misleading,

erroneous and distorted information as to risks and benefits, or the availability of adoption services -- are designed to induce a woman to renounce abortion or, at the least, to impugn her decision-making process. ¶1870.06(B).

Moreover, the mandatory waiting period, which both intrudes on the decisional process and burdens access to the means to effectuate the abortion decision, infringes the free exercise right to put one's religious choices into practice. Even if the moralistic preaching and parade of medical horribles required by ¶1870.06(B) and (C) were eliminated as unconstitutional, the mandatory waiting period remains to signify state disapproval of the decision to have an abortion. While counselors and doctors can and do suggest a waiting period to women who express ambivalence, most women seeking abortions have had

counseling and have, after considerable soul-searching, made up their mind before coming to the clinic.

Our constitution would not tolerate a state-imposed waiting period before undergoing adult baptism on the theory that the decision is a grave one; it cannot tolerate this stigmatizing, costly and medically risky delay here. Nor can the state make it more difficult or more dangerous -- as does the second trimester hospital requirement -- to effectuate religious or conscientious decisions.

These restrictions can be sustained only if the city can show that "it is the least restrictive means of achieving some compelling state interest," Wisconsin v. Yoder, 406 U.S. 205, (1972). "[T]he essence of all that has been said and written on the subject is that only those interests of

the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion." Ibid. at 216. See also McDaniel v. Paty, 435 U.S. at 628 (1978).

Here, there is no such interest. While the ordinance claims a purpose of protecting maternal health, this is belied by the indoctrination and scare tactics of the informed consent provisions as well as by the significant additional health dangers for women created by the waiting period and the second trimester hospital requirement. Nor can interest in potential life be asserted in defense of the ordinance, since such an interest is, by definition, not compelling until the third trimester. Roe v. Wade, 910 U.S. at 164. See also: Maher v. Roe, 432 U.S. at 472-76; McRae v. Harris, 101 S.Ct. at 2687. Before the third trimester, therefore, the state can

assert no interest sufficient to justify encroachment on religious freedom to choose abortion.

B. Chapter 1870 Discriminatorily Burdens Women for Whom Abortion is a Decision of Conscience and Doctors Who Assist Women in the Effectuation of Their Decisions in Violation of the Obligation of State Neutrality Commanded by the Free Exercise Clause.

If Akron had adopted a rule that all candidates for prenatal care must be thoroughly counseled about the particular dangers of carrying their pregnancies to term, given information about abortion services, and told to go home for at least 24 hours and reconsider whether childbirth is indeed the proper moral course
under the circumstances, the outcry would be deafening.

The example illustrates the discriminatory character of the Akron ordinance at issue. Those who, out of

religious or conscientious conviction, determine that abortion is proper, are subjected to a program of discouragement, deterrence and delay, while women who for similar reasons are compelled to or opt to bear a child suffer no such hindrance in the effectuation of their religious choice. Those who choose abortion are being sent home, not to advance their health or some independent, secular, and neutral purpose, but for the purpose of inducing them to consider and obey the contrary belief that "the unborn child is human life" -- a belief which is intrinsically religious.

The discrimination accomplished by Chapter 1870 is not at all inadvertent; it is explicit in the statutory scheme. Doctors who are opposed to abortion are protected against being required to participate in abortion under Chapter

1870 itself as well as under state law. ¶1870.14 Ohio Rev. Code Ann. ¶4731.91 (page 1977). By contrast to this respect for conscientious convictions of those opposed to abortion, the Akron ordinance requires pro-choice doctors to participate in an informed consent process which violates their conscientious beliefs as well as their ethical and professional commitments.

This case thus involves the "constitutionally imposed 'governmental obligation of neutrality' originating in the establishment and free exercise clauses of the First Amendment." Maher, 432 U.S. at 474, n.8, quoting Sherbert v. Verner, 374 U.S. at 409. Neutrality as between differing religious and non-religious views and practices is a core principle of the first amendment. It has long been settled that "a state can[not], consistent with the First

Amendment, pass laws which ... prefer one religion over another." See Everson v. Board of Education, 330 U.S. 1, 15 (1947).

The requirement of neutrality is strict where the free exercise of religion is at issue. See Walz v. Tax Commission, 397 U.S. 664 (1970). The free exercise clause "prohibits misuse of secular governmental programs 'to impede the observance of one or more religions or to discriminate invidiously between religions ... even though the burden may be characterized as being only indirect.' Braunfeld v. Brown, 366 U.S. 599 (1961) at 607." Gillette v. United States, 401 U.S. at 462. Thus Sherbert not only held that the Sunday work requirement was an impermissible burden on free exercise of a sabbatarian;

it also held that the "unconstitutionality of the disqualification ... is thus compounded by ... religious discrimination" in that, by contrast to the treatment of the sabbatarian, the emergency labor laws exempted those who were "conscientiously opposed to Sunday work." 374 U.S. at 406.

Equal treatment of both the woman whose conscience dictates abortion rather than childbirth and the doctor who assists her requires that this one-sided ordinance be invalidated. See also: United States v. Seeger, 380 U.S. 163 (1965); Welsh v. United States, 398 U.S. 333 (1970). The lack of compelling let alone colorable interest for this ordinance is thus highlighted by the religious discrimination it effects.

Far from advancing maternal health or an objectively informed decision, the goal of the ordinance was to convert or

at least shame women whose conscience dictated abortion, contrary to Akron's moral and religious position that abortion is the taking of human life.

This Court has repeatedly held in first amendment cases that mere disagreement with the content of belief or protected action does not suffice to justify infringement. See e.g., Fowler v. Rhode Island, 345 U.S. 67, 69-70 (1953); Niemotko v. Maryland, 340 U.S. 268, 272-73 (1951); Murdock v. Pennsylvania, 319 U.S. 105, 116 (1943); Ballard v. United States, 322 U.S. 78 (1944). Only where the free exercise of religion would pose a "substantial threat to public safety, peace and order," Sherbert v. Verner, 374 U.S. at 403, can the state counterpose its moral view against that of the believer. See e.g., Prince v. Massachusetts, 321 U.S. 158

(1944); Jacobson v. Massachusetts, 197 U.S. 11 (1905).

If this were not so, then the protection afforded by the free exercise clause would be swallowed up by the moral disapproval that particular beliefs and practices often inspire. Since plaintiffs here seek to obtain a perfectly legal service, the moral position adopted by the state cannot itself satisfy the compelling interest test, let alone qualify as legitimate in this context.

As Judge Dooling concluded in McRae: "The irreconcilable conflict of deeply and widely held views on this issue of individual conscience excludes any legislative intervention except that which protects each individual's freedom of conscientious decision and conscientious nonparticipation." Invalidation of ¶1870 is thus required

to preserve the free exercise of religion and the state's obligation of neutrality in this regard.

C. Chapter 1870 Constitutes State Sponsorship of One Religious Belief in Violation of the Establishment Clause of the First Amendment.

As this Court recognized in Sherbert, state neutrality on matters of conflicting religious belief is required by the establishment clause was well. 374 U.S. at 409. Not only does this ordinance disfavor one segment of religious believers in this society; it also favors one segment of religious belief about the creation of human life and thereby violates the principle that the state may not sponsor or place its authority on the side of a particular religious position. Engel v. Vitale, 370 U.S. 421, 429-30; School District of Abington v. Schempp, 374 U.S. 203

261-63 (1963); Walz v. Tax Commission, 379 U.S. 664 (1970) at 668. As the Court held in Everson v. Board of Education:

> The 'establishment of religion' clause of the First Amendment means at least this. Neither a state nor the Federal government ... can pass laws which aid one religion, and all religions, or prefer one religion over another. Neither can force nor influence a person ... to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs. ...

330 U.S. 1, 15 (1947).

The City of Akron cannot purge this ordinance of its religious character by conceding the impermissibility of ¶¶1870.06(B)(3)(4) and (5). It is clear, as stated in the preamble,* that the entire ordinance is premised upon and seeks to advance the

* See n* at 17 , supra.

belief that human life begins at conception. This view does not simply coincide with the dogmas of certain religious groups. Cf. Harris v. McRae, ___U.S.___, 100 S.Ct. 2671; it is a belief which is, at the core, inescapably in the "realm of religion -- where knowledge leaves off and faith begins."* As Justice Frankfurter defined it:

> The establishment clause withdrew from the sphere of legitimate concern and competence a specific but comprehensive area of human conduct: man's belief or disbelief in the verity of some transcendental idea and man's expression in action of that belief or disbelief. Congress may not make these matters, as such, the subject of legislation ... nor ... by any device, support belief or the expression of belief, for its own sake, whether from conviction of the truth of that belief, or from conviction that by propagation of that belief the

* Wolman v. Walter, 433 U.S. 229, 264 (1977) (Stevens, J., concurring and dissenting, quouting C. Darrow, Tr. of Oral Argument 7 Scopes v. State), 154 Tenn. 105, 289 S.W. 363 (1927).

> civil welfare of the state is served, or because a majority of its citizens, holding that belief, are offended when all do not hold it.

McGowan v. Maryland, 366 U.S. 420 (1961) at 465-66 (concurring). And. more recently in United States v. Seeger, this Court recognized contemporary definitions of religion which are particularly applicable to the matter of abortion.*

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* For example, a Vatican II draft declaration of the Church's relations with non-Christians states:

> Men expect from the various religions answers to the riddles of human condition. What is man? What is the meaning and purpose of our lives? What is the moral good and what is sin? What are death, judgment and retribution after death?

380 U.S. at 182. And Dr. Paul Tillich, who writes of God as the source of meaning within meaninglessness, explains:

> And if that word [God] has not much meaning for you, translate it, and speak of the depths of your life, of the source of your being, of your ultimate concern, of what you take seriously without any reservation. Perhaps, in order to do so, you must forget everything traditional that you have learned about God. ... Tillich, The Shaking of the Foundations 57 (1948).

380 U.S. at 187.

Amici view the notion that "the unborn child is human life" as one which is rooted in theological belief.* By enacting restrictions on abortion which are premised on and seek to propagate this belief, the Akron City Council has impermissibly taken sides

* Biology, invoked by the preamble and by ¶1870.06(B)(4), obviously cannot impart to the conceptus the value of human life. Despite popular rhetoric to the contrary, this is widely recognized. See, e.g., the 1974 "Declaration on Abortion" issued by the Sacred Congregation for the Doctrine of Faith of the Roman Catholic Church which holds: "It is not up to biological sciences to make a definite judgment on questions which are properly philosophical and moral, such as the moment when a human person is constituted. From a moral point of view this is certain:...'The one who will be a man is already one.'" p.6. And the East Senate Subcommittee on Separation of Powers that held hearings on S.158, which sought to base a declaration of personhood on biological evidence alone, was finally forced to concede: "Through those hearings we have also come to recognize that the finamental question concerning the life and humanity of the unborn is two fold:...Science cannot tell us what value to give to each human life. This second question can be answered only in light of the ethical and legal values held by our citizens and experienced by the framers of the Constitution. Report of East Subcommitte, at p. 3.

in a religious controversy. Doctors are made to profess belief which they view as religious and with which they differ; women are forced to listen and wait. The fact that no woman is required to forego abortion is irrelevant. "The absence of any element of coercion...is irrelevant to questions arising under the Establishment Clause." Committee for Public Education v. Nyquist, 413 U.S. 756, 786 (1973); School District of Abington v. Schempp, 374 U.S. at 224, n. 9; Engel v. Vitale, 370 U.St. at 430-31; People ex rel. McCollum v. Board of Education, 333 U.S. 203, 228 (1948). The desired effect of this ordinance is to induce women to "meditate upon" the position which opposes abortion and "perhaps to venerate and obey [it]." Stone v. Graham, ____U.S.____ , 101 S.Ct. 192, 194.

Moreover, the fact that this local authority has taken a position that deprecates a moral decision sacred to dissenting faiths threatens the dangers of intolerance, oppression and sectarian strife that the establishment clause was designed to avert. Everson v. Board of Education, 330 U.S. 1, 15-16, 53-55 (Rutledge, J. dissenting). Where as here, an issue is perceived as religious generally, and particularly by dissenting faiths, state sponsorship sacrifices the neutrality necessary to the preservation of religious harmony and the public peace. People ex rel. McCollum, 333 U.S. at 28 n. 19. James Madison remonstrated that against any state support for religious belief, even purportedly even-handed support:

> Because, it will destroy that moderation and harmony which the borebearance of our laws to intermeddle with Religion, has produced among its several sects. Torrents of blood have

> been spilt in the old world, by vain attempt of the secular arm to extinguish Religious discord, by proscribing all difference in Religious opionions...If...we begin to contract the bonds of Religious freedom, we know no name that will too severely reproach our folly. At least let warning be taken of the first fruit of the threatened inovation"

"Memorial and Remonstrance," reprinted in Everson v. Board of Education, 330 U.S. at 69 (Appendix to Rutledge, J. dissenting).

Madison's warning sounds far too contemporary. The effort reflected in this ordinance and the other laws before this Court to advance the belief that life begins at conception and stop or discourage abortion is part of a program pressed by a new and dangerous religious movement to undo the separation of church and state guaranteed by the first amendment. This Court is the ultimate refuge for the freedom of conscience that the no-establishment principle preserves.

CONCLUSION

The liberty of conscience, guaranteed by the first amendment's prohibition on state sponsorship or imposition of any belief, let alone religious belief -- these are corner-stones of our pluralistic democratic society. The battle raging over abortion is not a battle between good and evil, as some may see it, but is rather a battle between differing conceptions of the good. Each conception is grounded in profound religious, moral and ethical principles, and each is equally incomprehensible and offensive to those who believe otherwise.

This Court's decision in Roe v. Wade charts the only course acceptable under our constitution--refusing to government the power to adopt a "theory of life," and guaranteeing to women a

sphere of untrammeled privacy for the exercise and effectuation of their own, differing conscientious convictions. Any departure from the principles of Roe v. Wade threatens not only the right to abortion, but the foundation of individual freedom under the constitution. As James Madison said: "[I]t is proper to take alarm at the first experiment on our liberties..." "Memorial and Remonstrance" in Everson v. Board of Education, 330 U.S. at 65-66 (Appendix to Opinion of Rutledge, J., dissenting).

WHEREFORE, the Ordinance should be invalidated.

Respectfully submitted,



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Counsel would like to thank law student Jenny Wriggins, from Harvard Law School, for her help in the preparation of this brief.

APPENDIX A

RELIGIOUS COALITION FOR ABORTION RIGHTS

(1979)

Statement of Purpose: The Religious Coalition for Abortion Rights is an organization of national religious bodies which, on the basis of faith and moral conviction and in the light of constitutional guarantees of privacy and religious freedom, seeks to encourage and coordinate support for safeguarding the legal option of abortion; for ensuring the right of individuals to make decisions concerning abortion in accordance with their consciences and responsible medical practice; and for opposing efforts to deny these rights through constitutional amendment, or federal and state legislation.

Rationale: Many religious organizations

representing diverse denominations have adopted the position that decisions concerning abortion would be made according to individual conscience, consistent with responsible medical practice, free from the threat of criminal penalty...

However, a vocal minority would deny the option of legal abortion to all. Their personal belief that human life exists from the moment of conception has prompted their efforts to nullify the Supreme Court decision through a Constitutional amendment which would restrict access to abortion. One theological view would thus become law, binding on Americans of all faiths.

It is vital to increase public awareness of this danger. Enactment of such legislation would violate the religious freedom of every citizen by circumventing the First Amendment

guarantee of church-state separation.

APPENDIX B

The following are excerpts from statements about abortion by national religious organizations:

AMERICAN BAPTIST CHURCHES, U.S.A. (Annual Meeting, 1968)

Because Christ calls us to affirm the freedom of persons and sanctity of life, we recognize that abortion would be a matter of personal decision.

AMERICAN ETHICAL UNION (1965, reaffirmed 1979)

Abridgement of individual civil and human liberties as guaranteed by the United States Constitution is a danger to all. Among those liberties that must continue free of threat is the right of every woman to self-determination insofar

as continued pregnancy is concerned.

AMERICAN ETHICAL UNION,
NATIONAL WOMEN'S CONFERENCE
(1976, reaffirmed 1979)

We believe in the right of each individual to exercise his or her conscience; every woman has a civil and human right to determine whether or not to continue her pregnancy. We support the decision of the United States Supreme Court of January 22, 1973 regarding abortion.

We believe that no religious belief should be legislated into the legal structure of our country; the state must be neutral in all matters related to religious concepts.

AMERICAN FRIENDS SERVICE COMMITTEE
(1970)

On religious, moral, and humanitarian grounds, therefore, we arrived at the

view that it is far better to end an unwanted pregnancy than to encourage the evils resulting from forced pregnancy and childbirth. At the center of our position is a profound respect and reverence for human life, not only that of the potential human being who should never have been conceived, but that of the parent, the other children and the community of man.

Believing that abortion should be subject to the same regulations and safeguards as those governing other medical and surgical procedures, we urge the repeal of all laws limiting either the circumstances under which a woman may have an abortion or the physician's freedom to use his best professional judgment in performing it.

AMERICAN HUMANIST ASSOCIATION
(Annual Conference, 1977)

We affirm the moral right of women to become pregnant by choice and to become mothers by choice. We affirm the moral right of women to freely choose a termination of unwanted pregnancies. We oppose actions by individuals, organizations and governmental bodies that attempt to restrict and limit the women's moral right and obligation of responsible parenthood.

AMERICAN JEWISH CONGRESS and
WOMEN'S DIVISION, AMERICAN
JEWISH CONGRESS
(Biennial Convention, 1978)

The American Jewish Congress respects the religious and conscientious scruples of those who reject the practice of abortion. However, to the extent that they would embody those scruples in law binding on all, we oppose them.

We reaffirm our position that all laws

prohibiting or restricting abortion should be repealed. We believe that it is the right of a woman to choose whether to bear a child and that restrictive or prohibitive abortion laws violate a woman's right of privacy and liberty in matters pertaining to marriage, family and sex.

BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS
(1973)

It was voted that the Baptist Joint Committee on Public Affairs go on record as opposed to the Buckley-Hatfield amendment and any like or similar constitutional amendments, and that the staff be authorized to take all available action to oppose them.

B'NAI B'RITH WOMEN
(Biennial Convention, 1976,
reaffirmed 1978)

We wholeheartedly support the concepts

of individual freedom of conscience and choice in the matter of abortion. Any constitutional amendment prohibiting abortion would deny to the population at large their basic rights to follow their own teachings and attitudes on this subject which would threaten First Amendment rights. Additionally, legislation designed to ban federal funding for health facilities for abortions is discriminatory, since it would affect disadvantaged women, who have no access to expensive private institutions.

CATHOLICS FOR A FREE CHOICE
(1975)

We affirm the religious liberty of Catholic women and men and those of other religions to make decisions regarding their own fertility free from church or

governmental interventions in accordance with their own individual conscience.

CENTRAL CONFERENCE OF AMERICAN RABBIS
(1975)

We believe that in any decision whether or not to terminate a pregnancy, the individual family or woman must weigh the tradition as they struggle to formulate their own religious and moral criteria ftor each their own personal decision... We believe that the proper focus for formulating these religious and moral criteria and for making this decision must be the individual family or woman and not the state or other external agency.

As we would not impose the historic position of Jewish teaching upon individuals nor legislate as normative for society at large, so we would not wish the position of any other group

imposed on the Jewish community or the general population.

We affirm the legal right of a family or a woman to determine on the basis of their or her own religious and moral values whether or not to terminate a particular pregnancy. We reject all constitutional amendments which would abride or circumscribe this right.

CHRISTIAN CHURCH (DISCIPLES OF CHRIST)
(General Assembly, 1975)

Therefore be it resolved, that the General Assembly of the Christian Church (Disciples of Christ)

1. Affirm the principle of individual liberty, freedom of individual conscience, and sacredness of life for all persons.

2. Respect differences in religious biliefs concerning abortion and oppose, in accord with the principle of religious

liberty, any attempt to legislate a specific religious opinion or belief concerning abortion upon all Americans.

EPISCOPAL CHURCH
(General Convention, 1976)

Resolved: That the Episcopal Church express its unequivocal opposition to any legislation on the part of the national or state governments which would abridge or deny the right of individuals to reach informed decisions in this matter and to act upon them.

FEDERATION OF RECONSTRUCTIONIST CONGREGATIONS AND HAVUROT
(1981)

Although the Jewish tradition regards children as a blessing, a gift of life itself, the tradition permits the abortion of an unborn child in order to safeguard the life and the physical and mental health of the mother. The rabbis

did not take a consistent stand on the question of whether a fetus resembles 'a person.' They did not think it possible to arrive at a final theoretical answer to the question of abortion, for that would mean nothing less than to be able to define convincingly what it means to be human.

We recognize that abortion is a tragic choice. Any prospective parent must make an agonizing decision between competing claims--the fetus, health, the need to support oneself and one's family, the need for time for a marriage to stabilize, responsiblity for other children and the like. Some of us consider abortion to be immoral except under the most extraordinary circumstances. Yet we all empathize with the anguish of those who must make the decision to abort or not to abort.

LUTHERAN CHURCH IN AMERICA
(Biennial Convention, 1970,
reaffirmed 1978)

Since the fetus is the organic beginning of human life, the termination of its development is always a serious matter. Nevertheless, a qualitative distinction must be made between its claims and the rights of a responsible person made in God's image who is in living relationships with God and other human beings. This understanding of responsible personhood is congruent with the historical Lutheran teaching and practice whereby only living persons are baptized.

On the basis of the evangelical ethic, a woman or couple may decide responsibly to seek an abortion. Earnest consideration should be given to the life and total health of the mother, her responsibilities to others in her family, the stage of development of the fetus,

the economic and psychological stability of the home, the laws of the land, and the consequences for society as a whole.

MORAVIAN CHURCH IN AMERICA,
NORTHERN PROVINCE
(1974)

Whereas the Moravian Church believes in the sacredness of life and in the quality of life, and whereas we believe that abortion should not be used as a method of birth control nor a means of controlling population, and whereas Christian faith calls us to affirm the freedom of persons as well as the sanctity of life, be it resolved that abortion should be a matter of responsible personal decision, with continuing counseling provided if desired.

NATIONAL COALITION OF AMERICAN NUNS
(1982)

For thirteen years, the NCAN has debated the abortion issue.

While we continue to oppose abortion, in principle and in practice, we are likewise convinced that the responsibility for decisions in this regard resides primarily with those who are directly and personally involved.

NATIONAL COUNCIL OF JEWISH WOMEN
(National Convention, 1969,
reaffirmed, 1979)

The members of the National Council of Jewish Women reaffirm the firm commitment of "work to protect every woman's individual right to choose abortion and to eliminate any obstacles that would limit her reproductive freedom."

NATIONAL FEDERATION OF TEMPLE SISTERHOODS
(Biennial Assembly, 1975)

The National Federation of Temple Sisterhoods affirms our strong support for the right of a woman to obtain a legal abortion, under conditions now outlined in the 1973 decision of the United States Supreme Court. The Court's position established that during the first two trimesters, the private and personal decision of whether or not to continue to term an unwanted pregnancy should remain a matter of choice for the woman; she alone can exercise her ethical and religious judgment in this decision.

PRESBYTERIAN CHURCH IN THE U.S.
(General Assembly, 1970,
reaffirmed 1981)

The willful termination of pregnancy by medical means on the considered decision of a pregnant woman may on occasion be

morally justifiable. Possible justifying circumstances would include medical indications of physical or mental deformity, conception as a result of rape or incest, conditions under which the physical or mental health of either mother or child would be gravely threatened, or the socio-economic condition of the family...

Because of the great diversity in the scientific and theological disciplines as to when life begins, no single religious position should claim universal opinion and become the law. This seems to breach the basis for church and state separation. While laws may legislate behavior, they cannot legislate morality.

REFORMED CHURCH IN AMERICA
(General Synod, 1975)

To use, or not to use, legal abortion should be a carefully considered decision

of all the persons involved, made prayerfully in the love of Jesus Christ.

Christians and the Christian community should play a supportive role for persons making a decision about or utilizing abortion.

REORGANIZED CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS
(1974, reaffirmed 1980)

We affirm that parenthood is partnership with God in the creative processes of the universe.

We affirm the necessity for parents to make responsible decisions regarding the conception and nurture of their children.

We affirm a profound regard for the personhood of the woman in her emotional, mental and physical health; we also affirm a profound regard and concern for the potential of the unborn fetus.

We affirm the inadequacy of simplistic answers that regard all abortions as

murder or, on the other hand, regard abortion only as a medical procedure without moral significance.

We affirm the right of the woman to make her own decision regarding the continuation or termination of problem pregnancies.

UNION OF AMERICAN HEBREW CONGREGATIONS
(Biennial Convention, 1975)

The UAHC reaffirms its strong support for the right of a woman to obtain a legal abortion on the constitutional grounds enunciated by the Supreme Court in its 1973 decision... This rule is a sound and enlightened position on this sensitive and difficult issue, and we express our confidence in the ability of the woman to exercise her ethical and religious judgment in making her decision.

The Supreme Court held that the question of when life begins is a matter of religious belief and not medical or legal fact. While recognizing the right of religious groups whose beliefs differ from ours to follow the dictates of their faith in this matter, we vigorously oppose the attempts to legislate the particular beliefs of those groups into the law which governs us all. This is a clear violation of the First Amendment. Furthermore, it may undermine the development of interfaith activities. Mutual respect and tolerance must remain the foundation of interreligious relations.

UNITARIAN UNIVERSALIST ASSOCIATION
(General Assembly, 1977)

WHEREAS, attempts are now being made to deny Medicaid funds for abortion and to enact Constitutional amendments that

would limit abortions to life-endangering situations and thus remove this decision from the individual and her physician; and

WHEREAS, such legislation is an infringement of the principle of the separation of church and state as it tries to enact a position of private morality into public law; and

WHEREAS, we affirm the right of each woman to make the decisions concerning her own body and future and we stress the responsibilities and long-term commitment involved in the choice of parenthood,

THEREFORE, BE IT RESOLVED: that the 1977 General Assembly of the Unitarian Universalist Association goes on record as opposing the calling of a national constitutional convention for the purpose of amending the Constitution to prohibit abortion.

UNITARIAN UNIVERSALIST WOMEN'S FEDERATION
((Biennial Convention, 1975)

The Unitarian Universalist Women's Federation reaffirm[s] the right of any woman of any age or marital or economic status to have an abortion at her own request upon consultation with her physician...

UNITED CHURCH OF CHRIST
(General Synod, 1981)

The question of when life (personhood) begins is basic to the abortion debate. It is primarily a theological question, on which denominations or religious groups must be permitted to establish and follow their own teachings;

Every woman must have the freedom of choice to follow her personal and religious and moral convictions concerning the completion or termination of her pregnancy. The church as a caring community should provide counseling

services and support for those women with both wanted and unwanted pregnancies to assist them in exploring all alternatives;

UNITED METHODIST CHURCH
(General Conference, 1976, 1980)

When an unacceptable pregnancy occurs, a family, and most of all the pregnant woman, is confronted with the need to make a difficult decision. We believe that continuance of a pregnancy which endangers the life or health of the mother, or poses other serious problems concerning the life, health, or mental capability of the child to be, is not a moral necessity. In such a case, we believe the path of mature Christian judgment may indicate the advisability of abortion. We support the legal right to abortion as established by the 1973 Supreme Court decisions. We encourage

women in counsel with husbands, dotors, and pastors to make their own responsible decisions concerning the personal or moral questions surrounding the issue of abortion. (Resolution on Responsible Parenthood, 1976.)

Our belief in the sanctity of unborn human life makes us reluctant to approve abortion. But we are equally bound to respect the sacredness of the life and well-being of the mother, for whom devastating damage may result from an unacceptable pregnancy. In continuity with past Christian teaching, we recognize tragic conflicts of life with life that may justify abortion. (Social Principles, 1976, reaffirmed 1980.)

WOMEN'S DIVISION
GENERAL BOARD OF GLOBAL MINISTRIES
UNITED METHODIST CHURCH
(1975, reaffirmed 1979, 1980)

We believe deeply that all should be free to express and practice their own moral judgment on the matter of abortion. We also believe that on this matter, where there is no ethical or theological consensus, and where widely differing views are held by substantial sections of the religious community, the Constitution should not be used to enforce one particular religious belief on those who believe otherwise.

UNITED PRESBYTERIAN CHURCH IN THE U.S.A.
(General Assembly, 1972, reaffirmed 1978)

Whereas, God has given persons the responsibility of caring for creation as well as the ability to share in it, and has shown his concern for the quality and value of human life; and

Whereas, sometimes when the natural ability to create life and the moral and spiritual ability to sustain it are not in harmony, the decisions to be made must be understood as moral and ethical ones and not simply legal;

Therefore, in support of the concern for the value of human life and human wholeness...the 184th General Assembly:

b. Declares that women should have full freedom of personal choice concerning the completion or termination of their pregnancies and that artificial or induced termination of pregnancy, therefore, should not be restricted by law, except that it be performed under the direction and control of a properly licensed physician.

UNITED SYNAGOGUE OF AMERICA
(Biennial Convention, 1975)

"In all cases 'the mother's life takes precedence over that of the foetus' up to the minute of its birth. This is to us an unequivocal principle. A threat to her basic health is moreover equated with a threat to her life. To go a step further, a classical responsum places danger to one's pshychological health, when well established, on an equal footing with a threat to one's physical health." (1967)

[A]bortions, "though serious even in the early stages of conception, are not to be equated with murder, hardly more than is the decision not to become pregnant."

The United Synagogue affirms once again its position that "abortions involve very serious psychological, religious, moral

problems, but the welfare of the mother must always be our primary concern."

WOMEN OF THE EPISCOPAL CHURCH
(Triennial Meeting, 1973)

Whereas the Church stands for the exercise of freedom of conscience by all and is required to fight for the right of everyone to exercise that conscience, therefore, be it resolved that the decision of the U.S. Supreme Court allowing women to exercise their conscience in the matter of abortion be endorsed by the Church.

WOMEN'S LEAGUE FOR CONSERVATIVE JUDAISM
(Biennial Convention, 1974)

National Women's League believes that freedom of choice as to birth control is inherent in the civil rights of women.

YOUNG WOMEN'S CHRISTIAN
ASSOCIATION, U.S.A.
(1979)

As an organization rooted in the Christian faith, the YWCA is deeply conscious of the difficult personal and ethical choices raised by the issue of abortion.

The position of the YWCA is not "pro-abortion." It is a position supporting a woman's right to make an individual decision based upon her own religious and ethical beliefs and her physician's guidance. The answer to the question, "When does personhood begin?" must remain in the ethical and religious realm.

Since there is a wide variation of opinion among religious groups and individuals in our pluralistic society as to when personhood begins and what an ethical decision on abortion may be in different circumstances, the YWCA holds that no <u>one</u> religious belief should be

mandated by law. Our government is expressly commanded to make no law establishing any one religion or prohibiting free expression of religion.

APPENDIX C

A CALL TO CONCERN
(signed by 220 American religious ethicists in 1978)

The increasing urgency of the issue of abortion rights requires us as teachers and writers of religious ethics to speak out.

Abortion is a serious and sometimes tragic procedure for dealing with fetal life. It raises important ethical issues and cannot be blandly legitimized by the mere whim of an individual. Nevertheless, it belongs in that large realm of often tragic actions where circumstances can render it a less

destructive procedure than the rigid prolongation of pregnancy.

We support the Supreme Court decisions of 1973 which had the effect of removing abortion from the criminal law codes. The Court did not appeal to religion or ethics in arriving at its judgment, but we believe the decision to have been in accord with sound ethical judgment. Taking note of the fact that theologians, as well as other experts, disagree on the fundamental moral question of when life begins, the Court decided that the law ought not to compel the conscience of those who believe abortion to be in harmony with their moral convictions.

In the last four years, however, those decisions have been subjected to a relentless attack from those who take the absolutist position that it is always wrong to terminate a pregnancy at any time after the moment of conception.

Those who take this absolutist position have not hesitated to equate abortion at any stage of pregnancy with murder or manslaughter. From such an extreme viewpoint, all legal means are considered justified if they limit abortion, no matter what the human consequences for poor women and others--as in the recent efforts to deny Mediciad funds and to prohibit use of public hospitals for abortion services.

We feel compelled to affirm an alternative position as a matter of conscience and professional responsibility.

1. <u>The most compelling argument against the inflexibility of the absolutist position is its cost in human misery.</u> The absolutist position does not concern itself about the quality of the entire life cycle, the health and well-being of the mother and family, the question of

emotional and economic resources, the cases of extreme deformity. Its total preoccupation with the status of the unborn renders it blind to the well-being and freedom of choice of persons in community.

2. "Pro-life" must not be limited to concern for the unborn; it must include a concern for the quality of life as a whole. The affirmation of life in Judeao-Christian ethics requires a commitment to make life healthy and whole from beginning to end. Considering the best medical advice, the best moral insight, and a concern for the total quality of the whole life cycle for the born and the unborn, we believe that abortion may in some instances be the most loving act possible.

3. We believe it is wrong to deny Medicaid assistance to poor women seeking abortions. This denial makes it

difficult for those who need it most to exercise a legal right, and it implies public censure of a form of medical service which in fact has the moral support of major religious groups.

4. We are saddened by the heavy institutional involvement of the bishops of the Roman Catholic Church in a campaign to enact religiously-based anti-abortion commitments into law, and we view this as a serious threat to religious liberty and freedom of conscience. We acknowledge the legal right of all individuals and groups, both religious and secular, to seek laws that reflect their religious and ethical beliefs. But the institutional mobilization of Roman Catholic dioceses, including massive financial contributions by those dioceses to the National Committee for a Human Life Amendment, is inappropriate on this issue. If

successful, it would violate the deeply held religious convictions of individual members and official bodies of many other religious groups about when human personhood begins, the relative rights of a woman and a fetus, and responsible family life. This is particularly a problem when there is no clear majority opinion on these fundamental issues nor an adequate social base of consensus for legitimate and enforceable legislation.

5. We call upon the leaders of religious groups supporting abortion rights to speak out more clearly and publicly in response to the dangerously increasing influence of the absolutist position. There may be some ecumenical risks in such candor, but those risks have already been assumed by those who have pressed the absolutist position on religious grounds. In the long run, the true test of ecumenical authenticity is

the ability to sustain dialogue and friendship in spite of very sharp disagreements on matters of substance.